



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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December 23, 2024

Adam Dondro
2870 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833

Re: Your Request for Informal Assistance
Our File No. I-24-132

Dear Mr. Dondro:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (“Act”) and Government Code Section 1090, et seq.¹ Please note that we are only providing advice under the Act and Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest. Because your question is general in nature, we are treating your request as one for informal assistance.²

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General’s Office and the Sacramento County District Attorney’s Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice “is not admissible in a criminal proceeding against any individual other than the requestor.” (See Section 1097.1(c)(5).)

QUESTION

Does either Section 1090 or the Act prohibit you from taking part in decisions involving clients of Kate Bell Strategies given your spouse owns a consulting firm that intends to become a subcontractor for Kate Bell Strategies?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

The Act prohibits you from participating in any decisions if it is reasonably foreseeable the decision will have a material financial effect on Kate Bell Strategies and/or your spouse's firm. Generally, as explained more thoroughly below, you are prohibited from taking part in any decision in which either entity is explicitly involved because it is reasonably foreseeable the contract will have a material effect on the source of income. If you need additional assistance regarding matters in which Kate Bell Strategies or your spouse's firm is not explicitly involved, you should seek further advice identifying the specific decision.

Under Section 1090, you have not identified a particular contract between the CalHHS and a client of Kate Bell Strategies so we cannot provide specific advice regarding Section 1090 at this time. If you need additional assistance regarding Section 1090 and a specific contract with a client of Kate Bell Strategies, you should seek further advice once the contract is identified.

FACTS AS PRESENTED BY REQUESTER

You are the Agency Chief Information Officer ("AIO") for the California Health and Human Services Agency (CalHHS) and the Director of the CalHHS Office of Technology and Solutions Integration ("CalHHS OTSI"). These roles are appointments by the Governor.

Your spouse has her own consulting firm where she works with state entities and private companies, and provides advice, guidance, lobbying, arranges meetings, and works on procurements. She will become a subcontractor for another firm, Kate Bell Strategies ("KBS"), which does both lobbying work and engagements with state entities for policy engagement, as well as working towards procurements on behalf of her clients. Some of her clients are engaged in contracts within the CalHHS space, with your departments, and with your department directly (CalHHS OTSI). Others have nothing to do with CalHHS. Because KBS has meetings with you on behalf of some of her clients, and works on procurement efforts under your purview across CalHHS for some of her clients (while others have no connection to CalHHS), you are trying to determine what does and does not represent a conflict of interest with your wife subcontracting for KBS.

In your role as AIO, you serve as the Chief IT advisor to the Secretary of CalHHS. You were appointed by the Governor and report directly to the Secretary. This role includes signing off on required California Department of Technology and Department of General Services approval forms prior to issuing procurement documents including but not limited to approving non-competitive bid requests from any department under the CalHHS Agency, signing forms that allow procurements to be run, and any other form requiring the AIO signature (or Director in the case of CalHHS OTSI specific procurements).

ANALYSIS

The Act

The Act's conflict of interest provisions prohibit any public official from making, participating in making, or otherwise using their official position to influence a governmental decision in which the official has a financial interest. (Section 87100.) A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably

foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) The financial interests that may give rise to an official's disqualifying conflict of interest under the Act are set forth in Section 87103 and include:

- Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more or in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- Any source of income aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

The Act's definition of an "indirect investment" includes any investment or interest owned by the public official's spouse. (Section 87103.) "Income" includes any community property interest in a spouse's income. (Section 82030(a).) Additionally, under Section 82030, "income" to an official "also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater."

You have a business entity interest and source of income interest in your spouse's consulting firm. Because your spouse has a greater than 10 percent ownership interest in her firm, you also have a source of income interest in clients of her firm to the extent that your community property interest in your spouse's pro rata share of income received from a client exceeds \$500 or more in the 12 months prior to a decision. To the extent that KBS is a source of income of \$500 or more to you - through your community property interest - within 12 months prior to a decision, you will have a source of income interest in KBS.

Foreseeability & Materiality

Regulation 18701(a) states that an effect on an interest is presumed foreseeable if the interest is explicitly involved in the decision. An interest is explicitly involved if it is a named party in, or the subject of, a governmental decision before the official or the official's agency. A financial interest is the "subject of a proceeding" if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest.

When an official's economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). It states, "if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable."

A conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official's interest is material. With regard to a business entity interest, including a business entity that is a source of income, a financial effect is material if the entity is explicitly involved in a decision because it is a named party in, or the subject of, the

decision. (Regulation 18702.1(a)(1) and 18702.3(a)(1).) Regulation 18702.1(a)(1) also provides examples of decisions in which a business entity is explicitly involved.

You state that KBS works on procurement efforts for clients under your purview across CalHHS. For purposes of any contract decisions involving KBS clients, KBS will be considered a named party in, or subject of, any CalHHS contract decisions relating to its clients. (See, e.g., *Vanderbilt* Advice Letter, No. I-21-067 [where official's source of income interest is involved in the filing of an application or report with official's agency on behalf of a client, both the source of income interest and its client are considered named parties or the subject of the agency's decision].) Therefore, if KBS qualifies as a source of income interest to you, the Act would prohibit you from taking part in decisions relating to a contract decision concerning KBS as well as any client of KBS because it is reasonably foreseeable that those decisions would have a material financial effect on your source of income interest in KBS. Similarly, you are also generally disqualified from any decision that explicitly involves any other economic interest you may have, including any contract decisions involving your spouse's firm or clients of the firm who qualify as sources of income.

Notwithstanding the general prohibition from taking part in a decision if your interest is explicitly involved in the decision, we must also caution that you are potentially disqualified even when your economic interest is not explicitly involved in the decision. For a business entity, including a business entity that is a source of income, not explicitly involved in the decision, a foreseeable effect on the entity is material if the entity will be financially affected under the materiality standards in Regulation 18702.1. (Regulation 18702.3(a)(4).) Relevant to these facts, under Regulation 18702.1(a), the reasonably foreseeable financial effect of a governmental decision on an official's interest in a business entity is material if:

- The decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or greater than (A) \$1,000,000 or (B) five percent of the entity's annual gross revenues and the increase or decrease is at least \$10,000. (Regulation 18702.1(a)(2).)
- The decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or greater than (A) \$250,000 or (B) one percent of the entity's annual gross revenues and the change in expenses is at least \$2,500. (Regulation 18702.1(a)(3).)

Because disqualification under the Act is determined on a decision-by-decision basis and we do not have a specific governmental decision to analyze, we are unable to provide any specific advice or determination as to whether the Act prohibits you from taking part in any and all decisions not explicitly involving KBS, clients of KBS, your spouse's firm, or the clients of your spouse's firm. Accordingly, we are providing general assistance to the applicable provisions of the Act to assist you in making the determination in the future. To the extent you need additional assistance regarding a specific decision before your agencies in the future, you should seek further advice identifying the decision and any interests implicated by the decision.

Making, Participating in Making, or Influencing a Decision

Where a public official is disqualified from a governmental decision based on a conflict of interest under the Act, the official is prohibited from making, participating in making or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. (Section 87100.) Regulation 18704 includes definitions for “making a decision,” “participating in a decision,” and “using official position to influence a decision.” “A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits the official’s agency to any course of action, or enters into any contractual agreement on behalf of the official’s agency.” (Regulation 18704(a).) “A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.” (Regulation 18704(b).) A public official uses an official position to influence a governmental decision if the official: (1) Contacts or appears before any official in the official’s agency or in an agency subject to the authority or budgetary control of the official’s agency for the purpose of affecting a decision; or (2) Contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within the official’s authority or on behalf of the official’s agency in making the contact. (Regulation 18704(c).)

Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Therefore, “the test is whether the officer or employee participated in the making of the contract in [their] official capacity.” (*People v. Gnass* (2002) 101 Cal.App.4th 1271, 1292 quoting *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 236-237.) The prohibition applies even when the terms of the proposed contract are demonstrably fair and equitable, or are plainly to the public entity’s advantage. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646-649.) Section 1090 is intended “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.” (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.) A contract that violates Section 1090 is void. (*Thomson, supra*, at p. 646.)

Section 1090 casts a wide net to capture those officials who participate in any way in the making of the contract. (*People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052.) Participation is defined broadly and includes any act involving preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids. (*Millbrae Assn. for Residential Survival v. City of Millbrae, supra*, at pp. 237; see also *Stigall, supra* at p. 569.) For example, an official (or a public employee) may be convicted of a violation of Section 1090 if it is established that he or she had the opportunity to, and did, influence execution of the contract directly or indirectly to promote his or her personal interests. (*People v. Sobel, supra* at p. 1052.)

Nonetheless, we can provide specific advice related to Section 1090 only if an actual contract is identified along with the factual circumstances pertaining to the decisions related to the contract. Generally, we can only advise that Section 1090 prohibits you from making or participating in the making of a contract in which you have a financial interest unless an exception applies, and that this prohibition potentially extends to the making, modification, extension, or

renegotiation of any contracts involving your spouse's firm or the firm's clients, including contracts involving KBS and its clients.³ If you need additional assistance regarding the application of Section 1090 to a specific contract, you should seek further advice once the contract is identified.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

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³ It is well settled that changes to existing contracts are themselves "contracts" under Section 1090. Therefore, a decision to modify, extend, or renegotiate a contract constitutes involvement in the making of a contract under Section 1090. (See, e.g., *City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191 [exercising a renewal option and adjusting the payment rates is making a contract within the meaning of Section 1090].)